

★ FEB 2019 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ALFONSO DURAN,

BROOKLYN OFFICE

Plaintiff,

-against-

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
18-cv-1891 (AMD) (RER)

THE BEST GROCERY CORP., ALFREDO DURAN,

Defendants.
-----X

ANN M. DONNELLY, United States District Judge:

On March 28, 2018, the plaintiff, Alfonso Duran, commenced this action against the defendants, The Best Grocery Corp. and Alfredo Duran. (ECF No. 1.) On July 25, 2018, the plaintiff requested a certificate of default, which the clerk of the court entered on July 27, 2018. (ECF Nos. 11, 12.) The plaintiff filed a motion for default judgment on August 17, 2018, seeking an award for \$205,583.77, which includes minimum wage damages, overtime damages, spread-of-hour damages, liquidated damages, damages under the Wage Theft Prevention Act, attorneys' fees, costs, and pre-judgment interest. (ECF No. 13.) On January 28, 2019, the Honorable Ramon E. Reyes, Jr. recommended that I grant the plaintiff's motion and award the plaintiff \$71,189.63, plus attorneys' fees, costs, pre-judgment interest on \$33,094.82, and post-judgment interest. (ECF No. 15.) No objections have been filed to the Report and Recommendation, and the time for doing so has passed. (*Id.*)

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no party has objected to the magistrate judge's recommendation, "a district court need only satisfy itself that there is no clear error on the face of the record."

Urena v. New York, 160 F.Supp.2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

I have reviewed Judge Reyes's thorough and well-reasoned Report and Recommendation for clear error. The analysis in the Report and Recommendation is sound. The only modifications are mathematical; some of the final damages sums do not include amounts that were calculated in the underlying analysis. When those amounts are included, the plaintiff is entitled to \$54,427.51 in unpaid minimum wage compensation, \$22,048.27 in unpaid overtime wages, \$4,639.00 in spread-of-hours compensation, \$81,114.78 in liquidated damages, and \$5,000 in damages under the Wage Theft Prevention Act. The plaintiff is also entitled to \$1,590.00 in attorneys' fees, \$549 in costs, pre-judgment interest on \$81,114.78, and post-judgment interest.¹ I find no clear error in the remainder of the Report and Recommendation.

Accordingly, I adopt the Report and Recommendation with the above modifications. The plaintiff's motion for default judgment is granted, and the plaintiff is awarded \$169,368.56—this amount includes unpaid minimum wage compensation, unpaid overtime wages, spread-of-hours compensation, liquidated damages, damages under the Wage Theft Prevention Act, and attorneys' fees and costs—plus pre-judgment interest on \$81,114.78 and post-judgment interest.

SO ORDERED.

s/Ann M. Donnelly

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
February 26, 2019

¹ The Report and Recommendation correctly calculates the damages under the New York Labor Law from March 28, 2012, based on the six-year statute of limitations. Thus, the statement in the Report and Recommendation that "[t]he NYLL will cover Plaintiff's claims from March 28, 2011" appears to be a drafting error. (ECF No. 15 at 3.)